

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4235 of 2006
To
FIRST APPEAL No. 4243 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may
be allowed to see the judgment ?

2 To be referred to the Reporter or not
?

3 Whether their Lordships wish to see
the fair copy of the judgment ?

Whether this case involves a
substantial question of law as to the
4 interpretation of the constitution of
India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the
civil judge ?

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EXECUTIVE ENGINEER R & B DIVISION NO.16 & 1 -
Appellant(s)
Versus

PATEL BHAILALBHAI JIVANLAL - Defendant(s)

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Appearance :

Mr.S.S.Shah, learned Government Pleader for appellants
in First Appeal Nos.4235 to 4239 of 2006

Ms.Mini Nair, learned Assistant Government Pleader for
Appellants in First Appeal Nos.4240 to 4243 of 2006

MR AJ PATEL for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 05/04/2007

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. What is challenged in these appeals filed under Section 54 of the Land Acquisition Act, 1894 ("the Act" for short) read with Section 96 of the Code of Civil Procedure, 1908, is the legality of common judgment and award dated March 11,2005, rendered by the learned Joint District Judge and Fast Track Court (VI), Mehsana in Land Acquisition Reference Case Nos.508 to 516 of 2004, by which the claimants have been awarded additional amount of compensation at the rate of Rs.61.76 Ps. per sq.mt. for their acquired lands, over and above the compensation offered to them by the Special Land Acquisition Officer at the rate of Rs.4.23 Ps. per sq.mt. for irrigated lands and Rs.2.82 Ps. per sq.mt. for non-irrigated lands by his award dated September 14,1998.

2. A proposal was received by the State Government

to acquire agricultural and non agricultural lands of village Laxmipura, Taluka Kadi, District Mehsana for the public purpose of construction of main canal on river Narmada. On perusal of the said proposal, the State Government was satisfied that the lands mentioned in the said proposal were likely to be needed for the said public purpose. Therefore, a Notification under Section 4(1) of the Act was issued, which was published in the Official Gazette on December 13,1996. Thereafter, necessary inquiry under Section 5 of the Act was made and a report was submitted to the State Government as contemplated by Section 5A(2) of the Act. On scrutiny of the said report, the State Government was satisfied that the lands of village Laxmipura specified in the Notification published under Section 4(1) of the Act were needed for the public purpose of construction of main canal on river Narmada. Therefore, a declaration under Section 6 of the Act was made, which was published in the Official Gazette on May 2,1997. The interested persons were thereafter served with notices for determination of compensation payable to them. Accordingly the claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.100/- per sq.mt.

However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated September 14, 1998 offered compensation to the claimants at the rate of Rs.4.23 Ps. per sq.mt. for irrigated lands and Rs.2.82 Ps. per sq.mt. for non-irrigated lands. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, references were made to the District Court, Mehsana, where they were numbered as Land Acquisition Reference Cases Nos.508 to 516 of 2004.

3. On behalf of the claimants, witness Bhailalbai Jivanlal Patel was examined at Exh.29. The witness mentioned in his testimony before the Court that the lands acquired were highly fertile and that each claimant was earning substantial income from the sale of agricultural produces. During the course of recording of his testimony, the witness produced previous award of the Reference Court relating to the

lands of this very village rendered in Land Acquisition Reference Case Nos.243 to 250 of 1999 at Exh.26 and claimed that on the basis of the said award the claimants were entitled to additional amount of compensation at the rate of Rs.61.77 Ps.sq.mt. This witness was cross-examined at length by the learned counsels for the acquiring authorities. However, nothing substantial could be elicited nor it could be brought on record that previous award of the Reference Court relating to the lands of this very village produced by the witness was not a relevant piece of evidence.

4. On behalf of the acquiring authorities Mr.Dilipbhai Damodardas Pandya, who was then discharging duties as Deputy Mamlatdar, was examined at Exh.31. The witness stated that after taking into consideration all the relevant factors, just amount of compensation was determined by the Special Land Acquisition Officer and, therefore, the claimants were not entitled to enhanced compensation.

5. Yet another witness i.e. Mr. Jagdishbhai Chhotalal, who was then discharging duties as Deputy Executive Engineer with Sardar Sarovar Narmada Nigam

Ltd., was examined by the acquiring authorities at Exh.35. This witness mentioned in his testimony that the lands acquired were not irrigated lands and that village Laxmipura was not a developed village. The witness produced Map of Kadi Taluka at Exh.36 and mentioned that against the award of the Reference Court produced by the witness for the claimants at Exh.26 appeals were preferred before the High Court, which were pending as a result of which compensation payable to the claimants should not be determined on the basis of the said award. The witness further produced previous award of the Reference Court rendered in Land Acquisition Reference Case Nos.353 to 363 of 2001 relating to the lands of village Adundara at Exh.39 and claimed that on the basis of the said award at the best the claimants would be entitled to compensation at the rate of Rs.30.50 Ps.per sq.mt.

6. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of this very village was a relevant piece of evidence and furnished good guidance for the purpose of determining market value of the lands

acquired in the instant case. Placing reliance on the said award, the Reference Court has awarded additional amount of compensation to the claimants at the rate of Rs.61.76 Ps. per sq.mt. by the impugned award, giving rise to the above numbered appeals.

7. This Court has heard Mr.S.S.Shah, learned Government Pleader and Ms.Mini Nair, learned Assistant Government Pleader for the appellants and Mr.A.J.Patel, learned counsel for the claimant/claimants at length and in great detail. This court has also considered the paper book supplied by the learned counsel for the claimants, which includes the oral as well as documentary evidence adduced by the parties before the Reference Court.

8. The contention that the previous award of the Reference Court relating to the lands of this very village, which was produced at Exh.26, should not have been relied upon as the same had not attained finality, cannot be accepted. A perusal of Exh.26 shows that pursuant to notification issued under Section 4(1) of the Act, which was published in the Official Gazette on April 3,1996, lands of village

Laxmipura were acquired for the public purpose of construction of canal under the Narmada Project. Therein the Special Land Acquisition Officer had awarded compensation to the claimants at the rate of Rs.4.23 Ps. per sq.mt. by his award dated June 12,1998. Feeling aggrieved, the claimants had sought references. Accordingly references were made to the District Court, Mehsana where they were numbered as Land Acquisition Reference Nos.243 to 250 of 1999. The Reference Court by judgment and award dated August 7,2002 had awarded additional amount of compensation to the claimants at the rate of Rs.61.77 Ps. per sq.mt. The record further shows that feeling aggrieved by the said award, the acquiring authorities had preferred First Appeal Nos.1348 to 1355 of 2004 and the High Court by judgment dated March 30,2007 held that the claimants in those cases were entitled to compensation at the rate of Rs.42/- per sq.mt. for their acquired lands. Thus, the previous award of the Reference Court relating to the lands of this very village, which was produced at Exh.26, has attained finality. As previous award of the Reference Court relating to the lands of this very village was available for the consideration of Reference Court, this Court is of the opinion that

the Reference Court rightly did not rely upon the previous award of the Reference Court relating to the lands of village Adundra, which was produced at Exh.39. It may be mentioned that the witness for the claimant i.e. Bhailalbhai Jivanlal Patel, who was examined at Exh.29, has categorically stated that the lands earlier acquired from village Laxmipura were similar in all respects to the lands acquired in the instant case. It is well settled that previous award of the Reference Court relating to a village which has attained finality can be considered to be a good piece of evidence for the purpose of determining market value of similar lands acquired subsequently from the same village. Therefore, the Reference Court was justified in placing reliance on the previous award of the Reference Court relating to the lands of this very village. On the basis of the said award, this Court is of the opinion that the claimants would be entitled to compensation at the rate of Rs.42/- per sq.mt. It may be mentioned that in the earlier case, Notification under Section 4 of the Act was published in the Official Gazette on April 3,1996 whereas in the instant case the same was published in the Official Gazette on December 13,1996 and in view of gap of time of about eight months, the claimants

would be entitled to the benefit of reasonable rise in price of lands at the rate of 10% per annum. So calculated, this court is of the opinion that the claimants would be entitled to compensation in all at the rate of Rs.44/- per sq.mt. However, they would not be entitled to compensation at the rate rate of Rs.66 in all, as held by the Reference Court and, therefore, the appeals will have to be accepted in part.

9. For the foregoing reasons, all the appeals partly succeed. The common judgment and award dated dated March 11,2005, rendered by the learned Joint District Judge and Fast Track Court (VI), Mehsana in Land Acquisition Reference Case Nos.508 to 516 of 2004, awarding additional amount of compensation to the claimants at the rate of Rs.61.76 Ps. per sq.mt. for their acquired lands, over and above the compensation offered to them by the Special Land Acquisition Officer at the rate of Rs.4.23 Ps. per sq.mt. for irrigated lands and Rs.2.82 Ps. per sq.mt. for non-irrigated lands by his award dated September 14,1998, is hereby modified and it is held that the claimants in all would be entitled to compensation at the rate of Rs.44/- per sq.mt. for their acquired

lands. The other statutory benefits, which have been granted to the claimants by the impugned award, are not interfered with at all and are hereby confirmed. The appeals are allowed to the extent indicated herein-above. There shall be no orders as to costs.

The Registry is directed to draw the decree in terms of this judgment immediately.

(J.M.Panchal, J)

(Smt.Abhilasha Kumari, J)

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